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| | OAH 58-1902-17738-2 Agency No. BC2604897/CMW |
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

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| In the Matter of the Insurance Producer's License of Monette's Home Improvement Company, License No. 20372946 | FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION |
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The above-entitled matter came on for a hearing before Administrative Law Judge Linda F. Close (the ALJ), on January 23, 2007, at the Office of Administrative Hearings, 100 Washington Ave. S., Minneapolis MN 55401-2138. The hearing was held pursuant to a Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension, Statement of Charges, and Notice of Appearance (Notice of Hearing) dated December 19, 2006.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota St. #1200, St. Paul, MN 55102-2130, appeared on behalf of the Department of Commerce (Department). The Respondent, Monette's Home Improvement Company (Respondent), 16337 Coquina St. NW, Ramsey, MN 55303, did not appear in person or by counsel.¹ The record closed on January 26, 2007, when the Department's affidavit in support of its motion for default was received.

STATEMENT OF THE ISSUES

1. Did Respondent demonstrate financial irresponsibility by failing to use contract proceeds to purchase project materials, in violation of Minn. Stat. § 326.91, subd. 1(6)?
2. Did Respondent demonstrate untrustworthiness as evidenced by criminal convictions, in violation of Minn. Stat. §§ 45.027, subd. 7(4), 326.91, subd.1(6)?
3. Did Respondent engage in fraudulent, deceptive, or dishonest practice by failing to complete corrections required in a City of Ramsey Correction Notice and failing to obtain a final inspection, in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. pt. 2891.0040 subp. 1H?

¹ See Findings of Fact No. 3.

4. Did Respondent breach his contract by failing to complete the Complainant's project, in violation of Minn. Stat. § 326.91, subd. 1(4)?
5. Did Respondent perform negligently and fail to provide reasonable supervision in violation of Minn. Stat. § 326.91, subd. 1(4)?

Based on all of the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On December 21, 2006, a copy of the Notice of Hearing was sent to Jeremy Monette, Monette's Home Improvement Company, 16337 Coquina St. NW, Ramsey, MN 55303, as appears from an Affidavit of Service by Mail on file herein. The address was the address that the Respondent had most recently provided to the Department in connection with his licensure in the State of Minnesota. The U.S. Postal Service did not return that Notice to the Department as undelivered or undeliverable.²

2. The Notice of Hearing scheduled a hearing for January 23, 2007, at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Ave., Minneapolis, MN 55401-2138.

3. Respondent did not appear at the January 23, 2007, hearing, did not obtain the Administrative Law Judge's prior approval to be absent from the hearing, did not file a Notice of Appearance, and did not request that the hearing be rescheduled or any other relief from attending it.

4. The Notice of Hearing contained the following informational warning:

Respondent's failure to appear at the contested case hearing and/or prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.

5. Because Respondent failed to appear at the hearing, he is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of Hearing are taken as true and are incorporated into these Findings of Fact.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

² See Affidavit of Jean-Anne Gates.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry (Commissioner) are authorized to consider the charges against Respondent pursuant to Minn. Stat. §§ 45.027, 326.91, and 14.50.

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in the Notice of Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of his failure, without the ALJ's prior consent, to appear at the scheduled hearing.

6. By failing to use contract proceeds to purchase project materials, Respondent has demonstrated financial irresponsibility, in violation of Minn. Stat. § 326.91, subd. 1(6).

7. Respondent has demonstrated untrustworthiness as evidenced by criminal convictions for burglary in the first and second degrees, felony child endangerment, gross misdemeanor child endangerment, and criminal sexual conduct, in violation of Minn. Stat. §§ 45.027, subd. 7(4), 326.91, subd. 1(6).

8. Respondent engaged in fraudulent, deceptive, or dishonest practice by failing to complete corrections required in a City of Ramsey Correction Notice and failing to obtain a final inspection, in violation of Minn. Stat. § 326.91, subd. 1(2) and Minn. R. pt. 2891.0040 subp. 1H.

9. Respondent breached his contract with the Complainant by failing to complete the Complainant's project, in violation of Minn. Stat. § 326.91, subd. 1(4).

10. Respondent performed negligently and failed to provide reasonable supervision in violation of Minn. Stat. § 326.91, subd. 1(4).

11. Minn. Stat. §§ 45.027 and 326.91 empower the Commissioner to take disciplinary action against the Respondent, as a result of the Respondent's violations of those statutes.

12. It is in the public interest for the Commissioner to take disciplinary action against the Respondent as a result of the enumerated violations.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take such disciplinary action against the Respondent as he considers appropriate under the circumstances.

Dated: February 1, 2007

s/Linda F. Close

LINDA F. CLOSE

Administrative Law Judge

Reported: Default

NOTICES

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy J. Leppink, General Counsel, Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155, 651 284-5019, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, the agency must return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.